

**BEFORE THE
DEPARTMENT OF ENVIRONMENTAL QUALITY
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING**

IN THE MATTER OF CHAPTER 1,)
QUALITY STANDARDS FOR)
WYOMING SURFACE WATERS,)
WATER QUALITY RULES AND)
REGULATIONS)

STATEMENT OF PRINCIPAL REASONS

The Department of Environmental Quality, Water Quality Division, pursuant to the authority vested in it by the Act, Wyoming Statutes 35-11-101 to 1507 et seq., proposes to amend and revise Chapter 1 of the Wyoming Water Quality Rules and Regulations. Chapter 1 contains the quality standards for surface waters in the state including water classifications and designation of protected uses. This proposal does not include extensive consideration of the standards and classifications, but is limited to activities that may be authorized in or along Class 1 waters in the state. This proposal would only consist of a limited revision of Section 7 and the inclusion of two new definitions for storm water and construction-related discharges in Section 2.

Section 7 describes the standard of protection which shall be applied on Class 1 waters in the state. Class 1 waters are sometimes referred to as "outstanding resource waters" and are those streams, rivers, lakes, wetlands etc. in which no further degradation from point sources is allowed. Class 1 waters in Wyoming include all the waters within congressionally designated wilderness areas; Yellowstone and Grand Teton National Parks; Fremont Lake; and 14 specifically designated stream segments (*Attachment A*). Also treated as Class 1 are wetlands adjacent to Class 1 waters and many streams which are tributaries to the listed Class 1 waters.

The terms "stormwater" and "construction-related discharge" are used in the proposed revision to section 7. These terms specify the scope of the regulation and need to be defined. Definitions for each term have been added to Section 2. The definition of the term "tributary" has also been amended to clarify that upstream segments of the mainstem of any stream are treated as tributaries of the downstream reaches.

Purpose and Intent of this Proposed Revision

The purpose for this revision is to obtain clarification of the existing prohibition on new or increased point source discharges into Class 1 waters. Certain limited human-induced activities must be allowed to occur along and within Class 1 waters. These activities may include point sources such as storm water discharges or construction-related discharges. The proposed language is intended to protect and maintain the existing quality and beneficial uses of Class 1 waters while codifying the practice of allowing limited and necessary activities which are in the

public interest. This will be accomplished by setting a standard of performance on all activities permitted on Class 1 waters that will maintain existing quality and water uses rather than categorically prohibiting classes of activities.

These revisions affect only point source discharges which are subject to NPDES effluent permits, NPDES stormwater permits and Section 401 Water Quality Certifications. The Council is not proposing any change to the existing controls on nonpoint source discharges to Class 1 waters.

The principle reasons for these new and revised rules include:

Clarification of the prohibition of new discharges on Class 1 waters. Section 7, as it is currently written prohibits any new point source discharge of pollution or any increased discharge from an existing point source on Class 1 waters. This component of the standards has been in effect since at least 1979. It has been applied since that time to prohibit any new activity which would involve an "end of the pipe" type effluent discharge into a Class 1 water. These types of discharges are normally associated with domestic or industrial process wastewater from treatment plants, power plants, food processing facilities, gravel processing operations, mining, oil production and refining, fish hatcheries, aquaculture, feedlots and similar facilities and activities. The proposed revision will continue to prohibit any new or increased discharges of this type on Class 1 waters.

The current standard has never been applied by the Department in a manner which prohibited limited construction activities in, across, or along Class 1 waters. Section 7, as it is currently written, however, may be construed to prohibit construction activities in or along these waters including any activities which will disturb five (5) or more surface acres within the vicinity of a Class 1 water. Such an interpretation could result in the elimination of road and bridge construction, repair and maintenance; utility construction and maintenance; flood control construction and maintenance; habitat and fisheries improvement projects, mine reclamation projects and severely impact the use of private property over large areas of the state. Additionally, certain categories of industrial activities and projects requiring section 404 permits from the U.S. Army Corps of Engineers for the discharge of dredged or fill material could also be prohibited under the current rule.

An unanticipated conflict originated in 1992 when the Department began requiring permits for storm water discharges associated with construction or industrial activities. These activities are considered to be "point sources" under the regulations and the issuance of any permit may arguably be prohibited. It has never been the intent of the Department to prohibit construction or certain industrial activities that did not involve "end of the pipe" effluent discharges in Class 1 waters. This is evidenced by the fact that many storm water permits and water quality certifications have been and continue to be issued on these waters.

The purpose of the proposed revision to Chapter 1, Section 7 is to amend the language so that it accurately reflects the intent and actual application of the standard. The proposed language in Section 7(b) allows both stormwater and construction-related discharges so long as existing chemical quality and beneficial uses are maintained. Temporary increases in turbidity associated

with construction-related activities may also be allowed but cannot exceed the duration of the construction period. The language also provides for the imposition of necessary controls and monitoring to ensure that existing quality and uses are maintained.

The proposed revisions to section 7 also clarify that the purpose of the standard is to protect the beneficial uses of the water as well as maintaining existing water quality. Activities which would result in the loss or reduction of the ability of the Class 1 water to continue to support an existing use as defined in section 3 of the standards is prohibited.

The terms "stormwater" and "construction related discharge" are new terms within the proposed revision to Section 7. Definitions of these terms are proposed to be added to Section 2 of the regulations. The proposed definition for stormwater is intended to be limited to those types of surface runoff which are subject to the permitting requirements of section 402(p) of the Federal Clean Water Act or Chapter 18 of the Wyoming Water Quality Rules and Regulations. The proposed definition for construction-related discharge is intended to be limited to temporary discharges of turbidity or sediment that are related to construction activities in or along waters of the state.

The U.S. Environmental Protection Agency (EPA) commented that federal effluent limitations have been established for 10 categories of industrial stormwater discharges. Those discharges should be treated as traditional "end-of-pipe effluents" and be excluded from the definition of "stormwater" in the state rules. The Council agrees with this comment and has made the appropriate modification of the definition in Section 2 of the rules.

A comment was received at the Water and Waste Advisory Board meeting on November 9, 1997 that the current definition of "tributary" in the Chapter 1 rules should be clarified to show that it includes upstream segments of the main stem of streams as well as upstream branch channels. The Council agrees with this observation and has amended the existing definition in Section 2 to reflect this concept.

Antidegradation Implementation

A comment was received that the federal regulations (40 CFR 131.12) require an approved antidegradation implementation plan as an integral part of the state water quality standards program.

Implementation of this antidegradation requirement of this rule change is included as discussion in the administrative record. Since the proposed rule revision is limited to the protection of Class 1 waters, the implementation procedures need only to address Class 1 waters at this time. Antidegradation on all other waters may be addressed during the normal triennial review of the standards program.

The rule provides adequate "tier 3" antidegradation protection by requiring that water quality and water uses will be maintained at existing levels. The purpose of the implementation policy is to disclose the procedures that will be employed in any of the Department's permitting actions to

assure that the required level of protection is achieved. Therefore, the Council wishes to include the following antidegradation implementation policy for each of the Water Quality Division's regulatory programs on Class 1 waters as part of this administrative record:

Federal Requirements

EPA Region 8 has issued guidance identifying a number of "bottom line" requirements that are to be addressed in a State's antidegradation policy and its implementation. There are four requirements that apply specifically to tier 3 waters (Class 1 waters in Wyoming). This Statement of Principal Reasons will explain the Department's approach to each of the four issues and public participation in Department's decision-making for Class 1 waters. The four requirements and the Department's analysis of compliance with those requirements are listed and discussed below:

1. *What are the qualification requirements and procedures tier 3 designation (Class 1)?*

The qualification requirements for Class 1 waters are listed in Chapter 1, Water Quality Rules and Regulations, Section 4 (a). In addition, the general categories of waters (e.g., waters in national parks, etc.) and specific waters designated as Class 1 are listed in Appendix A of Chapter 1.

2. *What are the procedures by which the public can nominate a specific waterbody for Class 1 designation?*

Class 1 waters are designated by the Environmental Quality Council in rulemaking hearings. Both the Wyoming Administrative Procedures Act and the Department's Continuing Planning Process (CPP) provide for public input during regulatory and planning processes. Any interested person may petition the Council for designation and classification of a waterbody in accordance with the rulemaking requirements of Chapter III, Council's Rules of Practice and Procedure.

3. *What requirements apply to proposed new or expanded sources to Class 1 waters, including sources located on upstream segments?*

The revised rule continues to prohibit new or increased "end-of-the-pipe" effluent discharges of pollution but allows limited discharges associated with stormwater runoff and construction activities. Permits issued by the Department for stormwater or construction-related discharges will contain the following safeguards: (1) changes in water quality will be limited to temporary increases in turbidity; (2) turbidity increases will be limited to those allowed in Section 23 of Chapter 1; and (3) necessary controls and monitoring will be required to ensure existing water quality and uses are maintained and protected. Furthermore, the Department will impose whatever controls are necessary on regulated point source discharges to tributaries of Class 1 waters to the extent that the existing quality and uses of the downstream Class 1 segment will be protected and maintained. It is the Department's interpretation that "tributary" means any waters feeding the mainstem and any upstream mainstem segments (see revised definition).

Nonpoint sources of pollution are not regulated by permits issued by the Department, but are controlled by the voluntary application of cost effective and reasonable best management practices. For Class 1 waters, best management practices will maintain existing quality and water uses.

4. *What types of limited and temporary impacts to Class 1 Waters, if any, may be authorized, and what guidelines will be applied to identify the activities resulting in, or not resulting in, such impacts?*

The following procedures and decision-making processes will be used for each of the Water Quality Division's discharge permitting authorizations:

NPDES point source discharge permits:

Per the rule, permits for new or increased effluent discharges to Class 1 waters will not be issued. This prohibition is not intended to include industrial stormwater permits for which effluent limits have been established, as discussed in the next section. Stormwater permits for industrial activities may be issued upon a demonstration that substances for which effluent limitations apply will not be discharged into a Class 1 water.

NPDES Stormwater Permits (*Industrial Activities*):

May be issued with appropriate conditions and monitoring requirements on an individual case-by-case basis on Class 1 waters. An application for an industrial stormwater permit must contain: (1) a list of all pollutants which can reasonably be expected to occur on-site and be exposed to runoff events; (2) a map showing the location of the industrial facility in relation to the Class 1 receiving water and/or tributaries; (3) water quality data which characterizes the existing quality of the receiving Class 1 water and/or its tributaries in relation to the potential on-site pollutants; (4) a stormwater pollution prevention plan that provides (a) runoff from the industrial site resulting from up to a 100-year storm event will not discharge to a Class 1 water; or (b) runoff which may discharge to a Class 1 water as the result of any storm event will be of equal or better quality than the receiving water; and (5) a monitoring plan designed to assure compliance with item 4.

Prior to issuing an industrial stormwater permit, the Department will make a determination based upon the information submitted in the application that the potential effects on the Class 1 receiving stream, if any, will be temporary in nature and limited to discharges of clean sediment and turbidity. The Department may also include any additional construction practices, treatment processes, monitoring and reporting requirements or other special conditions as may be necessary to achieve and demonstrate that existing water quality and uses will be maintained.

The Department will conduct a 30-day public notice and comment period prior to the issuance of any industrial stormwater permit on Class 1 waters disclosing its intent to issue a permit for industrial stormwater discharges. Information received as a result of

the public notice will be considered by DEQ and may affect the final determination regarding permit approval.

Existing general stormwater permits for industrial activities will remain in effect for the remainder of their terms. The reauthorization of these permits, however, is not guaranteed and will be subject to the provisions of the revised rule and the implementation policy described herein.

NPDES Stormwater Permits (Construction Activities):

General stormwater permits for construction activities may be issued with appropriate conditions and monitoring requirements on Class 1 waters. An application for a construction stormwater permit must contain a Notice of Intent (NOI) to discharge stormwater prepared according to the provisions of Appendix B of the Wyoming General Stormwater Permit for Construction Activities (*Appendix B is included as Attachment B in this administrative record*). The applicant must submit along with the NOI, a detailed pollution prevention plan which includes sufficient controls on all potential sources of pollution. The pollution prevention plan must demonstrate that the only types of pollution that could reasonably be expected to reach a Class 1 water during a runoff event are limited to turbidity and clean sediment.

Runoff from ancillary, construction-related facilities such as borrow areas, gravel processing areas, asphalt processing plants, concrete mixing, fuel & solvent storage areas, equipment staging and maintenance areas, and any area which may be a source of pollutants other than turbidity and sediment must be controlled so as not to discharge to any Class 1 water. This provision applies to runoff resulting from up to a 100-year storm event.

The Department shall conduct an in-house review of the NOI and pollution control plan prior to approving coverage under the general stormwater permit. The Department may also include any additional construction practices, monitoring and reporting requirements or other special conditions as may be necessary to achieve and demonstrate that existing water quality and uses will be maintained. The DEQ will not normally conduct a public notice and comment period prior to authorizing specific activities under the stormwater general permit. Public comment was solicited during the establishment of the general permit and public notice will be provided at each subsequent renewal (at least once every five years). Upon review of any application for a construction stormwater permit, the Department may deny authorization under the general permit and require an individual permit. In such instances, a 30-day public notice will be provided as described in the previous section for an industrial activity.

401 Water Quality Certifications:

The Department adopted a policy on October 11, 1996 regarding the issuance of 401 certifications for activities on Class 1 waters. This policy was specifically designed to -

ensure the protection of existing quality and uses of Class 1 waters and serves as the antidegradation implementation procedure for activities subject to 401 certification on Class 1 waters (*the 401 certification policy is included as Attachment C in this administrative record*).

Individual 401 certifications are issued on all section 404 permits including the U.S. Army Corps of Engineers' nationwide and statewide general permits on Class 1 waters, and hydropower licences issued by the Federal Energy Regulatory Commission (FERC). A joint DEQ/Corps of Engineers public notice is issued by the Corps prior to the issuance of all individual 404 permits. There is no public notice prior to the authorization of any activity under a Section 404 nationwide or statewide general permit on Class 1 waters. The DEQ does not have a joint permitting agreement with FERC, therefore, shall conduct a separate public notice and comment period prior to issuing 401 certification for FERC licenses and permits on Class 1 waters.

Effect of the Rule Revision:

The Council anticipates that the result of these proposed revisions will reduce the potential for unreasonable and onerous interpretations and applications of the regulations. The amended standard will not reduce the actual level of protection which is afforded these waters nor will it result in any allowable lowering of water quality or adverse impact on beneficial uses. Any authorization for activities on Class 1 waters will continue to contain appropriate requirements for best management practices, monitoring, reporting, and mitigation. The net effect of the proposed language on the associated permitting programs will be as follows:

NPDES point source discharge permits:	No change - These types of permits will continue to be prohibited;
NPDES Stormwater Permits: (<i>Industrial Activities</i>)	Individual permits may be issued with appropriate conditions and monitoring requirements ensuring maintenance of existing quality and water uses;
NPDES Stormwater Permits: (<i>Construction Activities</i>)	General permits may be authorized with or without special conditions after an in-house application review; and in some cases, individual permits may be required;
401 Water Quality Certifications:	May be issued with appropriate conditions and monitoring requirements ensuring maintenance of existing quality and water uses;
404 Permits:	Will be allowed with appropriate 401 certification conditions.

Public Participation

On July 21, 1997, a public notice announcing the Department's intention to revise the regulations was released for the purpose of soliciting comment relating to the proposal. A public meeting was held via the Wyoming Video Conference System on September 10, 1997 during which the department accepted both oral and written comments. Comments received as a result of this public outreach were considered in the drafting of the proposed revisions.


A subsequent public notice was issued by the Water and Waste Advisory Board on September 22, 1997 and a public meeting held on November 9, 1997. Additional written comments were solicited during this public review period and oral comments were accepted at the November meeting. All of the comments received and the Advisory Board's recommendations have been considered and addressed in this rule revision. The Advisory Board recommended this rule to the Council at their meeting on November 7, 1997.

Finally, the Council held a public hearing via the Wyoming Video Conference System on May 7, 1998. All public comments were considered during the adoption of these rules. An analysis of these comments is contained in Attachment D.

Conclusion. The Council has determined that the adoption of these rules is necessary to clarify and update the requirements of the surface water protection program and to provide the department with adequate authority and flexibility to operate the program.

EXECUTED THIS 24th DAY OF August, 1998.

FOR THE ENVIRONMENTAL QUALITY COUNCIL


Chairperson

Attachments to this document:

Attachment A, Wyoming Class 1 Waters

Attachment B, Pollution Prevention Plans for Discharges Associated with Construction Activities

Attachment C, Policy for 401 Certification on Class 1 Waters

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ATTACHMENT A

Wyoming Class 1 Waters

(WYOMING CLASS 1 WATERS)

1. All surface waters located within the boundaries of national parks and congressionally designated wilderness areas;
2. The main stem of the Snake River through its entire length above the U.S. Highway 22 Bridge (Wilson Bridge);
3. The main stem of the Green River, including the Green River Lakes from the mouth of the New Fork River upstream to the wilderness boundary;
4. The Main Stem of the Wind River from the boundary of the Wind River Indian Reservation upstream to Boysen Dam;
5. The main stem of the North Platte River from the mouth of Sage Creek (approximately 15 stream miles below Saratoga, Wyoming) upstream to the Colorado state line;
6. The main stem of the North Platte River from the headwaters of Pathfinder Reservoir upstream to Kortess Dam;
7. The main stem of the North Platte River from the Natrona County Road 309 bridge (Goose Egg bridge) upstream to Alcova Reservoir;
8. The main stem of Sand Creek above the U.S. Highway 14 bridge;
9. The main stem of the Middle Fork of the Powder River through its entire length above the mouth of Buffalo Creek;
10. The main stem of the Tongue River, the main stem of the North Fork of the Tongue River, and the main stem of the South Fork of the Tongue River above the U.S. Forest Service Boundary;
11. The main stem of the Sweetwater River above the mouth of Alkali Creek;
12. The main stem of the Encampment River from the U.S. Forest Service boundary upstream to the Colorado state line;
13. The main stem of the Clarks Fork River from the U.S. Forest Service boundary upstream to the Montana state line;
14. All waters within the Fish Creek (near Wilson, Wyoming) drainage;
15. The main stem of Granite Creek (tributary of the Hoback River) through its entire length;
16. Fremont Lake;
17. All streams that are tributary to the above listed waters and are otherwise unlisted in Chapter 1, Appendix A of the Wyoming Water Quality Rules and Regulations; and
18. Wetlands adjacent to class 1 waters are also treated as class 1.

ATTACHMENT B

Pollution Prevention Plans for Discharges Associated with Construction Activities

APPENDIX B

STORM WATER POLLUTION PREVENTION PLANS (Construction Activities)

Contents of Plan

The storm water pollution prevention plan (SWPPP) shall include the following items:

A. Site Description

Each SWPPP shall provide the following:

1. A description of the nature of the construction activity;
2. A description of the intended sequence of major activities which disturb soils for major portions of the site (e.g., grubbing, excavation, grading);
3. Estimates of the total area of the site and the total area of the site that is expected to be disturbed by excavation, grading, or other activities;
4. An estimate of the runoff coefficient of the site during construction (Refer to Table 1 on page 15);
5. A site map indicating drainage patterns and approximate slopes anticipated after major grading activities, areas of soil disturbance, the location of major structural and nonstructural controls, the location of areas where stabilization practices are expected to occur, surface waters (including wetlands), and locations where storm water are discharged to a surface water;
6. The name of the receiving water(s) and the ultimate (if any) receiving water(s); and
7. The areal extent of wetland acreage at the site.

B. Controls

Each SWPPP shall include a description of controls and measures that will be implemented at the construction site as well as the party (contractor, subcontractor, etc.) that will be responsible for implementing each item. The SWPPP shall clearly describe, for each major activity, control measures and the timing during the construction process that the measures will be implemented. (For example, perimeter controls for one portion of the site will be installed after the clearing and grubbing necessary for installation of the measure, but before the clearing and grubbing for the remaining portions of the site. Perimeter controls will be actively maintained until final stabilization of those portions of the site up gradient of the perimeter control. Temporary perimeter controls will be removed after final stabilization). The description of controls shall address the following minimum components:

1. Erosion and Sediment Controls

a. Stabilization Practices

A description of interim and permanent stabilization practices, including site-specific scheduling of the implementation of the practices. Site plans should ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized. Stabilization practices may include temporary seeding, permanent seeding, mulching, geotextiles sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation, and other measures. Stabilization measures shall be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased.

b. Structural Practices

A description of structural practices to divert flows from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from exposed areas of the site. Such practices may include silt fences, earth dikes, drainage swales, sediment traps, check dams, subsurface drains, pipe slope drains, level spreaders, storm drain inlet protection, rock outlet protection, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins. Structural practices should be placed on upland soils to the degree attainable. The installation of these devices may be subject to Section 404 of the CWA.

2. Storm Water Management

A description of measures that will be installed during the construction process to control pollutants in storm water discharges that will occur after construction operations have been completed. Structural measures should be placed on upland soils to the degree attainable. The installation of these devices may be subject to Section 404 of the CWA. This permit only addresses the installation of storm water management measures, and not the ultimate operation and maintenance of such structures after the construction activities have been completed and the site has undergone final stabilization. Permittees are only responsible for the installation and maintenance of storm water management measures prior to final stabilization of the site, and are not responsible for maintenance after storm water discharges associated with construction activity have been eliminated from the site.

- a. Such practices may include storm water detention structures (including wet ponds); storm water retention structures; flow attenuation by use of open vegetated swales and natural depressions; infiltration of runoff onsite; and sequential systems (which combine several practices). A goal of 80 percent removal of total suspended solids from those flows which exceed pre-development levels should be used in designing and installing storm water management controls (where practicable). Where this goal is not met, the permittee shall provide justification for rejecting each practice based on site conditions.
- b. Velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel as necessary to provide a non-erosive velocity flow from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected (e.g., maintenance of hydrologic conditions, such as the hydro period and hydrodynamics present prior to the initiation of construction activities.).

3. Other Controls

A description of measures used to control other pollutants commonly associated with construction activities.

- a. The SWPPP shall include a description of measures used to prevent contamination by solid waste materials and where the waste will ultimately be disposed of. No solid materials, including building materials, shall be discharged to waters of the United States, except as authorized by a Section 404 permit.
- b. Off-site vehicle tracking of sediments and the generation of dust shall be minimized. The SWPPP shall include a description of measures used to control contamination, associated with the construction activity, from access roads.
- c. The sanitary sewage facilities (typically portable) and how they will be maintained shall be described. The SWPPP shall ensure and demonstrate compliance with applicable State and/or local waste disposal, sanitary sewer or septic system regulations.
- d. Measures used to prevent contamination by other materials associated with construction activity shall be described. All other materials and chemicals associated with the construction activity (including fuels, lubricants and other chemicals) must not contaminate any ground water, surface water or storm water. Typically this can be achieved by storing these chemicals in properly sealed containers within secondary containment structures (preferably under cover to prevent contact with rain or snow), routinely inspecting vehicles for leaks, having personnel trained and the materials on hand to contain spills, and having Material Safety Data Sheets readily accessible on site.
- e. A description of pollutant sources from areas other than construction, including storm water discharges from dedicated asphalt plants and concrete plants, and a description of controls and measures that will be implemented at those sites.
- f. Good housekeeping practices shall be described in the SWPPP. Good housekeeping practices include storing materials in an orderly manner to minimize the possibility of spills or leaks while accessing those materials.

C. Maintenance

A description of procedures which will be used to maintain in good and effective operating conditions the vegetation, erosion and sediment control measures and other protective measures identified in the site SWPPP. Such practices may include removing sediment from structural controls (such as sediment ponds/traps, silt fences or bale check dams) when 50% design capacity is reached, reinforcement and repair of silt fences, or reseeding revegetated areas as needed.

D. Inspections

In addition to or as part of the comprehensive site evaluation required under Part IV.A. of this permit, qualified personnel shall be identified, either by name or job title, to inspect the pollution control measures at appropriate intervals specified in the SWPPP. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained for a minimum of three years.

E. Training

A description of the employee training programs for personnel responsible for inspecting, maintaining or installing pollution control measures. Training should address topics such as proper selection, maintenance and installation of pollution controls, spill response, good housekeeping and material management. The SWPPP shall identify periodic dates for such training, and records of training shall be maintained for a minimum of three years.

ATTACHMENT C

Policy for 401 Certification on Class 1 Waters

THE STATE



OF WYOMING



JIM GERINGER
GOVERNOR

Department of Environmental Quality

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ADMINISTRATION (307) 777-7758 FAX 777-7682	ABANDONED MINES (307) 777-6145 FAX 634-0799	AIR QUALITY (307) 777-7391 FAX 777-5616	INDUSTRIAL SITING (307) 777-7368 FAX 777-6937	LAND QUALITY (307) 777-7756 FAX 634-0799	SOLID & HAZARDOUS WASTE (307) 777-7752 FAX 777-5973	WATER QUALITY (307) 777-7781 FAX 777-5973
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DEQ/WQD POLICY 401 CERTIFICATION ON CLASS 1 WATERS

October 11, 1996

POLICY

1. CERTIFICATION OF ACTIVITIES ON CLASS 1 WATERS

The following classes of construction activities are examples of what may be authorized on class 1 waters:

- Habitat Restoration and Enhancement
- Repair and Maintenance of Existing Structures
- Road Construction and Maintenance
- Utility Construction and Maintenance
- Streambank Stabilization and Flood Control
- Minor Recreational Facilities (boat docks, fishing piers, hiking trails etc.)
- Environmental Cleanup Activities
- Miscellaneous Development on Isolated Wetlands

Persuant to the regulations, Chapter I, Section 7, Certification must be denied on class 1 waters for the following types of activities:

The construction or operation of any new facilities that will involve a point source effluent discharge or the expansion of any existing facility that will result in an increase of pollution from an existing discharge. Examples of facilities and activities that commonly involve discharges include wastewater treatment plants, power plants, food processing facilities, gravel processing operations, mining, oil production and refining, fish hatcheries, aquaculture, feedlots etc.

Construction activities can be certified by DEQ if they are designed to meet the following general and activity-specific requirements:

General Requirements - apply to all projects and activities on class 1 waters

Can be certified if all of the following are met

Deny 401 if any of the following applies

No long-term degradation occurs and all potential negative effects cease at the end of the construction period.	Project results in degradation of water chemistry, loss of aquatic habitat or a reduction in beneficial use.
Potential contaminants are limited to turbidity and sediment. Increases in downstream turbidity are limited to 10 NTUs above the upstream condition at all times on streams that support fisheries or drinking water supplies. Sediment cannot be discharged in amounts that will adversely affect beneficial uses as described in Chapter I, Section 15.	The application does not contain nor can the certification be conditioned to provide reasonable assurance that turbidity can be controlled within the 10 NTU limit. Sediment will be discharged in amounts that settle to form sludge, bank or bottom deposits.
Stream channel integrity and habitat is preserved and maintained. Written concurrence from the Wyoming Game & Fish Dept. that aquatic habitat will not be degraded will be solicited.	Project may result in channel instability or significant loss of aquatic habitat. Written concurrence from the Game & Fish Dept. is not obtained.
All beneficial uses are fully protected and maintained.	Project may result in a loss or reduction of beneficial uses.
Existing ambient conditions i.e. dissolved oxygen, pH or temperature are not degraded.	Existing ambient conditions will be degraded by the activity.
All construction activities must be designed and operated in such a manner that water from dewatering activities, hydrostatic testing of pipelines, gravel washing etc.. is not allowed to discharge directly to a class 1 surface water.	Any surface discharge of process water to a class 1 water will occur.

In addition to the general requirements above, the following measures apply on an activity-specific basis on class 1 waters:

Additional Activity-Specific Requirements

Habitat Improvement Activities:

- All projects must be supported by the Wyoming Game & Fish Department.
- Habitat improvement projects should not be designed to trade one beneficial use for another but all uses must be fully maintained, e.g. existing wetlands should not be excavated or inundated to create deep water areas for fish, or stream segments that serve as nursery areas or food sources should not be converted to holding areas for adult fish.
- Special consideration can be given for projects that are part of an approved watershed restoration plan or wetland conservation plan.
- The department must use discretion and professional judgement in determining whether beneficial uses will be impaired in light of the overall project purposes and desired effects.

Repair/Maintenance Activities:

- The repair, rehabilitation or replacement of currently serviceable structures provided that the proposed work does not deviate from the original plans, purpose, or use of the structure is acceptable if the general requirements for certification on class 1 waters are met.

Streambank Stabilization and Flood Control Activities:

- Riprap, revetments, jetties and other similar structures can be approved if the purpose of the project is to reduce existing environmental degradation, is necessary to protect human health & safety or to prevent substantial loss of private property and does not significantly and adversely affect beneficial uses.

Roads, Utilities and Minor Recreational Activities:

- Existing facilities may be maintained and new facilities constructed either as part of a public project or private development as long as the general requirements for construction on class 1 waters are met.

2. Application of the Turbidity Standard on Waters that do not Naturally Support the Uses for Which They are Protected.

For the purposes of Section 401 certifications, compliance with the turbidity standard will not be required on class 1, 2, or 3 waters that presently do not support fish or public water supplies.

This policy to provide internal guidance for actions of the department was signed this 16th day of October, 1996.

Gary Beach
Administrator
Water Quality Division

Dennis Hemmer
Director
Department of Environmental Quality